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June 13, 1983

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Mr. David Rines
Special Assistant
Office of the Governor
State House
Concord, NH 03301

Dear Mr. Rines:

You have asked us to advise you whether contracts between the New Hampshire Retirement System and investment advisors must be approved by the Governor and Council. For the reasons stated below, it is our opinion that the contracts are subject to the approval of the Governor and Council.

You have provided us with a copy of a letter dated June 9, 1983 from Harry M. Descoteau to the Governor and Council setting forth the reasons why he believes the contracts are not and should not be subject to the approval of the Governor and Council. Mr. Descoteau contends that personal service contracts of the New Hampshire Retirement System are not subject to this requirement because of the System's express statutory authority to contract for investment counsel services. Mr. Descoteau also points out that the source of funds for these contracts is the Retirement System funds, which consist of contributions by employers and employees, and not "general or other state specific funds." While Mr. Descoteau is correct as to his assertion with respect to the source of funds, neither this fact nor the existence of express statutory authority for these contracts relieves the New Hampshire Retirement System of the obligation to submit the contracts to the Governor and Council for their approval.



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Section 508 of the Manual of Procedure of the Division of Purchase and Property and page 120.1 of the Manual of Procedure of the Department of Administration and Control provide that all personal service contracts in excess of \$500 must be approved by the Governor and Council. The Manual promulgated by the Department of Administration and Control was adopted by the Governor and Council on December 1, 1982, and filed by the Department of Administration and Control with the Office of Legislative Services on December 10, 1982. The authority for imposing this requirement can be found in RSA 8:13, V and RSA 4:15. RSA 8:13, V explicitly authorizes the Director of Accounts, subject to the direction and supervision of the Comptroller, to "review all state contracts for budget control and for substantive protection of public interests." RSA 4:15 provides that:

The expenditure of any moneys appropriated or otherwise provided to carry on the work of any department of the state government shall be subject to the approval of the governor, with the advice of the council, under such general regulations as the governor and council may prescribe with reference to all or any of such departments, for the purpose of securing the prudent and economical expenditures of the moneys appropriated. ...

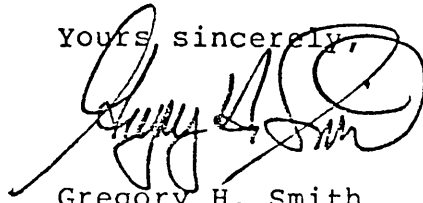
The combined regulatory authority vested in the Governor and Council and the Department of Administration and Control is clearly sufficient to impose the requirement on state agencies that personal service contracts in excess of \$500 (including the contracts now in question) be approved by the Governor and Council.

The fact that the New Hampshire Retirement System has express statutory authority to enter into contracts of this nature does not compel a different conclusion. The Revised Statutes Annotated are replete with references granting state agencies and departments the authority to contract. See, for example, RSA 19-A:16 (Supp. 1981); RSA 8-C:1(m) and (n) (Supp. 1981); RSA 162-A:6(a); RSA 282-A:113, II. Were such references to be construed to mean that contracts for those departments need not be approved by the Governor and Council, then RSA 8:13, V and RSA 4:15 would be rendered virtually meaningless. Statutes are to be read together whenever possible, State v. Woodman, 114 N.H. 497 (1974), and not construed so as to produce an illogical or absurd result. State v. Kay, 115 N.H. 696 (1975).

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The fact that the Retirement System Fund is the source of funds for the contract is equally unpersuasive. RSA 4:15 refers to the "... expenditure of any moneys appropriated or otherwise provided to carry on the work of any department. ..." (Emphasis added.) Consequently, it is our opinion that contracts in excess of five hundred dollars between the New Hampshire Retirement System and investment advisors must be approved by the Governor and Council. The Governor and Council are required to secure the prudent and economical expenditure of moneys provided to carry on the work of state government. Their review of contracts is consistent with and perhaps indispensable to the discharge of that responsibility.

Yours sincerely,



Gregory H. Smith
Attorney General



Deborah J. Cooper
Deputy Attorney General

GHS/DJC/der

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